



## MILPITAS PLANNING COMMISSION STAFF REPORT

August 12, 2015

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**APPLICATION:** USA Liquors – 142 W. Calaveras Blvd. – UA15-0007- A request to amend Conditional Use Permit No. UP11-0014 to add sales of all types of liquor to an existing 1,015 square foot alcohol beverage sales outlet.

**RECOMMENDATION:** Staff recommends that the Planning Commission adopt Resolution No. 15-029 approving Conditional Use Permit No. UA15-0007 to allow the sale of all types of alcohol subject to the conditions of approval.

**LOCATION:**

Address/APN: 148 W. Calaveras Blvd., (APN 22-24-037)  
Area of City: Midtown Specific Plan Area

**PEOPLE:**

Project Applicant: Charanjit Sandhu, SBC Liquors, Inc.  
Consultant(s): Ashok Babbar  
Property/Business Owner: Marie R. Lacorte Trustee & Et Al.  
Project Planner: Cindy Hom, Assistant Planner

**LAND USE:**

General Plan Designation: General Commercial (GNC)  
Zoning District: General Commercial (C2)  
Overlay District: Site and Architectural and Office Overlay (-S-OO)

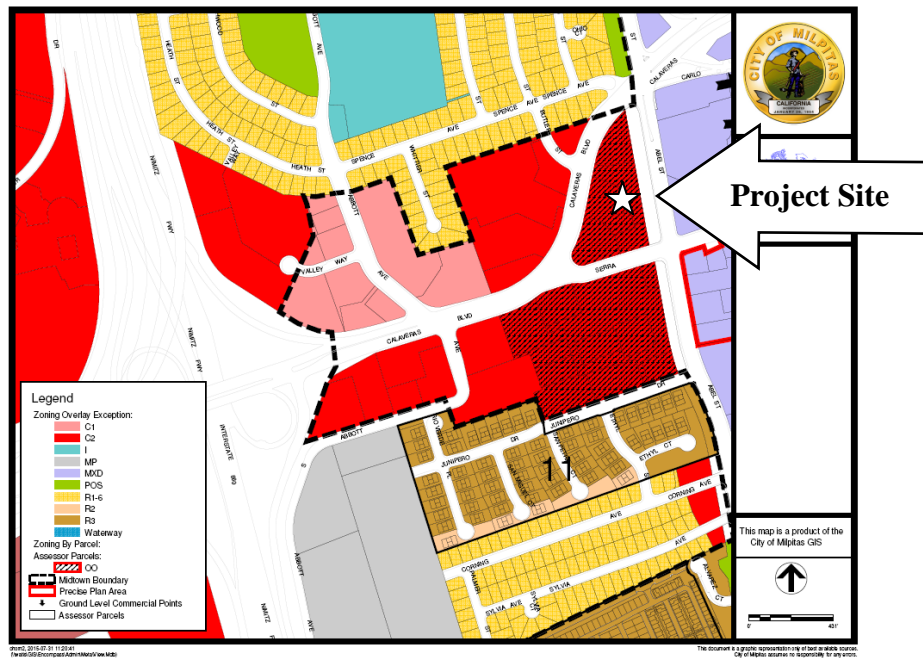
**ENVIRONMENTAL:** Categorically Exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

### **EXECUTIVE SUMMARY**

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The applicant requests a conditional use permit amendment to allow an upgrade of an existing beer and wine license (Type 20 - Off-Sale Beer and Wine) to all types of liquor (Type 21 – Off-Sale General) at an existing 1,015 square foot convenience store. The store sells other items, including but not limited to, tobacco cigarettes and prepackaged food items.

## Map 1 Project Location



## Map 2 Project Site



## **BACKGROUND**

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### ***History***

On July 2013, the Planning Commission approved Conditional Use Permit No. UP11-0014 to allow for a 1,015 square foot alcohol beverage sales outlet for off-site consumption of beer and wine as well as tobacco products and convenience items.

### ***The Application***

On July 24, 2015, Charanjit Sandhu with SBC Liquors, Inc. submitted a Conditional Use Permit Amendment to upgrade the existing beer and wine license to all types of liquor for an existing convenience store. The project will require a Letter of Public Convenience and Necessity from the Department of Alcoholic Beverage Control (ABC) because the project falls within in an undue concentration area for liquor licenses. The project is submitted pursuant to Milpitas Municipal Code XI-10-57.03-1 (J) (Modifications of or Amendment) of the Milpitas Zoning Ordinance for Planning Commission review and approval.

## **PROJECT DESCRIPTION**

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### ***Overview***

The project request is an amendment to conditional use permit to upgrade the existing liquor license from beer and wine to all types of liquor for a 1,015 square foot convenience store. The applicant proposes no exterior changes and intends to continue with the same hours of operations of 7:00AM to 12:00PM, seven days a week.

### ***Location and Context***

The project is located in an existing one-story commercial building within the Calaveras Square shopping center. The center is bounded by Calaveras Boulevard on the west, Abel Street on the east and Serra Way on the south. The shopping center consists of four (4) buildings with 21,000 square feet of commercial retail space and is surrounded by other commercial land uses that includes Black Bear Diner, Starbuck's drive-thru establishment, dental office, beauty supply store, dry cleaning establishment and courier service to name a few. A vicinity map of the subject site location is included on the previous page.

## **PROJECT ANALYSIS**

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### ***General Plan and Zoning Conformance***

The General Plan and Zoning Designation for this site is General Commercial. The purpose and intent of the General Commercial land use designation is to provide for the wide range of retail sales as well as personal and business services that cater to the general commercial needs of the City. The project complies with the purpose and intent in that the sale of alcoholic beverages expands the range of retail sales for the area. Further, the project provides various convenience items and tobacco products that would cater to the general commercial needs of the community.

### ***Climate Action Plan Conformance***

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The Climate Action Plan (CAP) provides a policy framework for the City to reduce community-wide Greenhouse Gases emissions. Through the CAP, the City establishes mitigation strategies to address climate change. The project does not propose any major construction or building addition that requires conformance to the City's Climate Action Plan.

### ***Midtown Specific Plan***

The applicant proposes to operate a 1,015 square foot alcohol beverage outlet. Since the project will not require additional parking or propose modifications that increase the floor area, the application is not subject to site and architectural upgrades as required by the Midtown Specific Plan.

### ***Development Standards***

The project complies with the General Commercial development standards as demonstrated in the table below:

**Table 1:**  
**Summary of Development Standards**

	<b>Standard</b>	<b>Existing</b>	<b>Complies?</b>
<b><u>Setbacks</u> (Minimum)</b>			
Front	0 feet	175'	Yes
Side Yard	0 feet,	220' and 325'	Yes
Rear	0 feet	30'	Yes
<b><u>Floor Area Ratio</u> (Maximum)</b>	0.50	0.13	Yes
<b><u>Building Height</u> (Maximum)</b>	None	18'	Yes

### ***Parking***

The project complies with the city's parking requirements in that the proposed retail use requires five (5) spaces and does not require additional parking beyond the five (5) parking spaces that were allotted to the tenant. Furthermore, the shopping center has a reciprocal parking agreement, which allows parking to be used by all tenants of the four parcels. Currently, the project site provides 163 parking spaces.

### ***Access & Circulation***

Existing vehicle access to the site is provided by a three (3) two-way driveway off of W. Calaveras Boulevard and one (1) two-way driveway on Serra Way. Public sidewalks are located along the perimeter of the property and crosswalks that provides connectivity to adjacent commercial centers.

### ***ABC Licensing***

The applicant is requesting a Type 21 Off-Sale General License which authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. The sale of alcohol

in the State of California is regulated by the Alcoholic Beverage Control Act (California Business and Profession Code Sections 23000-25762). The California Department of Alcoholic Beverage Control is required to deny an application for a license if issuance of the license would result in or add to an undue concentration of licenses in a particular area, unless the local governing body finds that it would serve the public convenience or necessity. An undue concentration is defined under Business and Profession Code Section 23958.4 as an area where: (a) there is a crime reporting district that has a 20% greater number of reported crimes than the average of all crime reporting districts in the jurisdiction or (b) the ratio of retail licenses of the type applied for, to the population in the census tract or census division exceeds the ratio for the county in which the applicant premises are located.

The project will require a Letter of Public Convenience and Necessity from the Department of Alcoholic Beverage Control (ABC) because the applicant is requesting a new type of alcohol license. According to ABC, the project falls within in an undue concentration area for liquor licenses. As of August, 2015 there are seven (7) off-sale permits, while ABC only authorizes five (5) off-sale permits. For the Department of Alcoholic Beverage Control to grant the alcohol license, the Planning Commission is required to make a finding that sale of alcohol will not have a negative impact on the surrounding community and serves the public convenience or necessity.

#### **FINDINGS FOR APPROVAL (OR DENIAL)**

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A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

Conditional Use Permit Findings (Section XI-10-57.04 (F)):

- i. *The project will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The subject property is not in a crime reporting district in that it is not 20% over the usual level of crime. Based on Police Department records, there are no significant issues in terms of calls for service. There are no active code enforcement violations. As conditioned, the applicant shall be required to provide the following measures:

- Responsible Alcohol Training - The operator shall be responsible for ensuring that all employees receive "Responsible Alcoholic Beverage Service" training as offered through programs established by the Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request.
- Litter and Graffiti Prevention - Pick up litter and abate graffiti on a daily basis.
- Security Video Surveillance System - Install video surveillance camera(s) to monitor and provide complete coverage of the parking areas. Prior to occupancy, the applicant shall be detail and manufacturer's specification for a video surveillance security system for Police Department review and approval. Video recordings shall be retained for 30 days. The applicant shall make them available to law enforcement upon request.
- No Loiter Signs: Applicant will display information signs to remind customers not to loiter and prohibit any drinking of alcohol on the property.

ii. *The proposed use is consistent with the Milpitas General Plan*

The project is consistent with the General Commercial designation in that the land use provides for the general commercial needs of the surrounding neighborhood. The project is an existing convenience store selling convenience goods, alcoholic beverages and tobacco products. The project also provides opportunity for business retention and encourages economic pursuits for small businesses, which are consistent with the following General Plan Policies:

- Policy 2.a-I-3 - Encourage economic pursuits which will strengthen and promote development through stability and balance.
- Policy 2.a-I-7 Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.

iii. *The use is consistent with the Milpitas Zoning Ordinance*

The project is consistent with purpose and intent of the General Commercial Zoning District in that the proposed convenience items and alcoholic beverage sales would serve the general commercial needs of the City. The project will not create any objectionable noise or odors. As described above, the project also complies with the development standards and parking requirements.

***Department of Alcoholic Beverage Control Findings pursuant to Business and Profession Code Section 23958.4:***

- i. The Milpitas Police Department reviewed the application request, project plans, and previous calls for service and has stated they are neutral to the issuance of the conditional use permit application. The project location is not located in a high crime rate area. There are no significant operational issues that have been identified by the Milpitas Police Department. Based on staff's analysis, the following findings can be made that the project will not be detrimental to the surrounding area and serves the public convenience or necessity because:
- The existing convenience store is not located within a crime reporting district.
  - There are no existing violations against the property.
  - The existing convenience store is located in the general commercial zone and is surrounded by other commercial uses. The project is a compatible land use and adds to the variety of the Calaveras Square Shopping Center that does not have any general retail stores.
  - The project is not located within 100-feet of residential homes and is more than 600-feet away from any school, Public Park, or religious facility and therefore will not be detrimental or injurious to property, improvements or disturb the quiet and peaceful enjoyment of residential homes.
  - As conditioned, the applicant shall be required to obtain training for responsible alcohol serving and incorporate measures such as video surveillance and signage to discourage loitering.

## **ENVIRONMENTAL REVIEW**

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The Planning Division conducted an environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). The project is categorically exempt from further CEQA review under Section 15301 (Existing Facilities) of the CEQA Guidelines. The project is a request to permit the sale of all types of alcohol to an existing convenience store.

## **PUBLIC COMMENT/OUTREACH**

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Staff provided public notice the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the San Jose Mercury on July 31, 2015. In addition, 536 notices were sent to owners and occupants within 1,000 of the project site. A public notice was also provided on the project site, on the City's Website, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), and posted at City Hall.

## **CONCLUSION**

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The project is consistent with the General Plan and Milpitas Zoning Ordinance in terms of land use and development standards in that alcohol beverage sales are conditionally permitted use in the General Commercial Zoning District and provides a public convenience.

## **RECOMMENDATION**

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STAFF RECOMMENDS THAT the Planning Commission:

1. Open and Close Public Hearing; and
2. Adopt Resolution No. 15-029 approving Conditional Use Permit Amendment No. UA15-0007 subject to the above findings and the attached conditions of approval.

## **ATTACHMENTS**

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A: Resolution No. 15-029

B: Project Plans